increase the moral risk. *Rowland* v. *Ins. Co.*, 82 Kan. 220. The minority view, which undoubtedly represents the weight of authority, maintains the position that the incumbrance must be a valid subsisting lien upon the property in order to be such an incumbrance as was within the contemplation of the parties, and as will effect a forfeiture. *Ins. Co.* v. *Sewing Machine Co.*, 41 Mich. 131; *Rowland* v. *Ins. Co., supra; Hanscom* v. *Ins. Co.*, 90 Me. 333; *Neafie* v. *Woodcock*, 44 N. Y. Supp. 768.

For a note on the effect of a valid chattel mortgage upon *part* of the goods insured, see 8 MICH. L. REV. 67.

INSURANCE—NO LIABILITY UNDER POLICY EXEMPTING DEATH RESULTING FROM "WAR" FOR DROWNING OF INSURED WHEN LUSITANIA SANK.—Under a life insurance policy expressly providing that it did not cover death resulting directly or indirectly or wholly or partly from war, where the insured was a passenger on the British steamer Lusitania, which was sunk by torpedoes fired from a submarine of the Imperial German government, and which was part of its naval force, while a state of war existed and was then being waged between that government and the United Kingdom of Great Britain and Ireland, it was *held* that the insurer was not liable for the drowning of the insured. *Vanderbilt et al.* v. *Travelers' Insurance Co.* (N. Y., 1920), 184 N. Y. Supp. 54.

It was the plaintiff's contention that since the transaction violated the common usages and acceptances of principles of enlightened nations, termed the laws of war, the death of the insured could not be ascribed to the excepted condition of the policy. The defendant contended that however execrable the act of the defendant may have been it was none the less the result of war. These opposing contentions made it necessary for the court to define the word "war" as used in the policy. The court defined it as "every contention by force between two nations under the authority of their respective governments," and therefore concluded that the defendant was not liable under the policy. In the case of *Bas* v. *Tingy*, 4 U. S. 37, the same definition was given. In the narrower sense, war has been regarded as controlled within absolute law. GROTIUS (DE JURE BELLI AC PACIS PROLEG. 28, and *passim*) held this view. Phillimore (Volume 3, p. 82) also said: "It is regulated by a code as precise and as well understood as that which governs the intercourse of states in their pacific relations to each other." But these views of modern jurists owe their existence to mutual concessions and are mere voluntary relinquishments of the rights of war. *The Rapid*, 8 Cranch. 155. In *Bas* v. *Tingy, supra*, it was said that "Every contention by force between two nations in external matters, under authority of their respective governments, is not only war but public war. One whole nation is at war with another whole nation, and all the members of the nation declaring war are authorized to commit hostilities against all the members of the other in every place and under every circumstance." In *Bishop* v. *Jones and Petty*, 28 Tex. 294, it was held that "the general rule depends upon and grows out of the fundamental principle that when the sovereign power of a state declares

war against another state, it implies that the whole nation declares war and that all the subjects or citizens of one are the enemies of those of the other." See also *U. S.* v. *Active,* 24 Fed. Cas. 755. Usage and custom prescribing restraints imposed for the protection of non-combatants and third persons generally is merely "a guide which the sovereign follows or abandons at his will. The rule * * * is addressed to the judgment of the sovereign, and although it cannot be disregarded by him without obloquy, yet it may be disregarded." Opinion by Chief Justice Marshall in *Brown* v. *U. S.,* 8 Cranch. 110. It appears then from these authorities that, *as far as the courts are concerned,* every authorized act of hostility against the enemy is lawful. War is governed by no restraints or limitations which any nation is bound to respect in its dealings with the other. This view, in accordance with that of the principal case, is maintained by the weight of authority.

NEW TRIALS—WHERE JUDGE MISDIRECTS HIMSELF ON A POINT OF LAW.—Two defendants were sued for a trespass, and the judge of the county court, sitting without a jury, apportioned the damages between them and rendered a several judgment against each for the assigned portion. Being convinced that this was error in law, the judge granted a new trial. *Held* that while he could grant a new trial for error committed in point of fact, he had no authority to do so for error in point of law. *Aster* v. *Barrett & Hulme* [1920], 3 K. B. 13.

The effect of the above decision is to make it impossible for the trial court to correct such an error, and to force the aggrieved party to an appeal. The American practice is generally *contra. Hawxhurst* v. *Rathgeb* (1898), 119 Cal. 532; *Wilson* v. *City National Bank* (1877), 51 Neb. 87. But it is said that when the error is purely one of law the effect of the award of a new trial is not a re-trial of the case but only a correction of the error by the court. *Lumbermen's Ins. Co.* v. *City of St. Paul* (1901), 82 Minn. 497; *Merrill* v. *Miller* (1903), 28 Mont. 134. In Indiana the practice is in accordance with the rule stated in the principal case. *Holmes* v. *Phoenix Mut. Life Ins. Co.* (1874), 49 Ind. 356; *Maynard* v. *Waidlich* (1901), 156 Ind. 562.

PATENTS—UTILITY OF INVENTION.—Plaintiff sued to recover damages for infringement of a patent. It was shown on the trial that the apparatus as described in the patent would not work successfully, although it could be made to do so by some mechanical changes. *Held,* the patent was invalid because of the inutility of the device. *Beidler* v. *United States* (1920), 40 Sup. Ct. 564.

It was quite unnecessary for the court to pass on the validity of the patent. If the defendant was using essentially the same device as that covered by the patent, then obviously the patented device was usable. "The patent was itself evidence of the utility of Claim 4, and the defendant was estopped from denying that it was of value." *Westinghouse Co.* v. *Wagner Mfg. Co.,* 225 U. S. 604, 616. If the defendant was using an essentially different device, equally obviously he was not infringing the plaintiff's patent